



Investigation Skills for Managers

Jim Johnston

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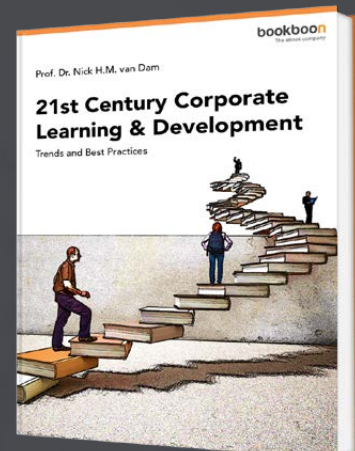
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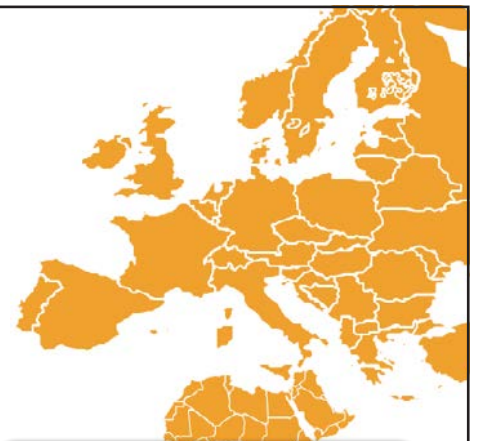
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1 Introduction



This Book

This book is designed to help you plan and execute an investigation. It is broken down into the key steps of an investigation, with a chapter dedicated to each step. We have included exercises to practice the techniques as well as example forms that can be used or adapted by you.

1.1 Introduction

Have you ever been involved in an investigation? If you think about it then you will find that investigation forms part of life. Cast your mind back to school when you did projects, especially in science when you conducted experiments to find out fascinating things to write about.

In adult life, anyone who has bought a house, or a car has conducted an investigation. You decided on a set of criteria then gathered data so that when you made a decision it was objective. Many times with home based decisions, we are emotional and the investigation helps us balance logic and emotion, so that when we have to live with the decision in the long term, we can do so knowing we considered all the factors.

Exercise: Write down all examples of investigations you have carried out. Examples may include house purchase, or making a business case.

Many of us learn the hard way as well, by making impulse decisions that we live to regret, expensive mistakes. Next time, we are much more careful as we know the consequences of letting the heart rule the head. There are other times as well, when the data screams at a certain choice, but instinct tells us that despite the problems, we have to use more subjective judgement to reach our decision.

So yes, pretty much everyone has been involved in an investigation. Does that make us all qualified investigators? Many people say we don't need qualified investigators but consider this. Take an example, say a house purchase and imagine now that you are going to have to justify your decision in a court of law. Would you be happy? Would your process stand up to legal scrutiny?

We have all seen those court room dramas where the clever lawyer traps the unwitting witness. Would that be you?

Business organisations have a legal responsibility to treat their staff fairly. Where the staff member perceives that they have not been treated in a fair way, they have recourse in law. In the UK this means an application to an Employment Tribunal for redress of the wrong, through reinstatement (if dismissed) or most likely through financial compensation.

Employment matters are contractual disputes, so come under civil law. The definition of a contract is 'an agreement between two parties of equal standing', but with employment contracts the parties very rarely have equal standing. Employment Tribunals basically came about through employers exercising their greater power in terminating employment when it suited them, often for no reason at all. ET's were established to give employees a legal route to make a complaint and seek redress.

The problem for organisations is that the weight of proof lies on them. This means that at the outset the court is assuming that the organisation is wrong and the applicant (the employee) is right, so the organisation is guilty and sets out to prove its innocence.

Exercise: Have you ever felt you have been treated unfairly at work? How did it make you feel? Did you feel you had the tools to do anything about it?

This might sound unfair, and plenty of managers have complained of this assumed 'guilt'. However, because organisations are assumed to have greater power in the contractual relationship, and greater resources to deal with complaints, the ET places a higher level of responsibility on the employer, rather than the employee. Added to the legal responsibility of 'duty of care', and you can see that with the greater power, resources and duty of care, the employer has an equivalent amount of responsibility to demonstrate it has been fair. The Employment Tribunal redresses the imbalance in the contractual relationship, so in the court at least, the two parties are equal.

This is where investigations come in. A sound investigation will present the case that the organisation has acted in a fair way in dealing with the situation. It shows that decisions made were done so on the basis of sound procedures and good information, that emotion has not distorted the decision, and that regardless of the data, sound judgement has been applied.

The cost of getting it right is expensive, but the cost of getting it wrong can be ruinous. It is always cheaper to do a good investigation than not to, but for that to happen managers and other nominated people need to know what they are doing, and approach the investigation in a systematic and objective way.

1.1.1 The Purpose of Investigations

Does this then mean that the prime purpose of an investigation is to build a case to defend the organisation at tribunal? From the description above that would appear to be the case, but very few incidents that will be investigated will get anywhere near a court of law.

The primary purpose of any investigation is to find out what happened and then take steps to make sure that it doesn't happen again.

If we can prevent recurrence, then everyone wins. People can work in an environment that is welcoming and encouraging, with processes that are efficient, productive and safe, and that provides sufficient reward for employees and achieves the objectives of the organisation.

1.1.2 The Burchell Test

In the UK, one of the most significant cases in employment law is *British Home Stores v Burchell*. (1980 ICR 303). The case sets out some of the principles an employment tribunal should follow in deciding whether a dismissal for misconduct is fair or unfair.

The case was an appeal by British Home Stores on the original decision made at Employment Tribunal, where they found in favour of Miss Burchell in her Unfair Dismissal claim.

In making its decision, the court established three tests of fairness.

1. Whether the employer actually believed that the employee was guilty of misconduct,
2. Whether it had reasonable grounds on which to base that belief, and
3. Whether it had carried out as much investigation as was reasonable in the circumstances of the particular case.

There have been many cases since, but Burchell was the first to specifically mention investigations as a requirement to forming a 'reasonable belief'. Lots of things have changed since then, but where people are dismissed as a result of misconduct, the court will look to see if an investigation has been conducted, and that the investigation was adequate in the circumstances.

1.2 The Basics of Investigations

1.2.1 Who should Do Them?

In organisations people who have the authority to ask the right questions of any person at any level should carry out investigations. Appointing the office junior to find out why the MD has been fiddling their expenses is unlikely to uncover any key information, and if the case goes to court, the poor investigation will likely be the cause for the organisation losing.

In organisations people in authority tend to have the title 'manager', and managers conduct the vast majority of investigations. However, managers are not always the most appropriate investigators due to time, knowledge and potential bias factors. It is important that whoever is appointed as the investigator has both the authority and the time to conduct the investigation. Potential investigators may include:

- Managers
- HR professionals
- H&S professionals
- Trade Union reps
- Safety reps
- Outside independent investigators

In many cases, organisations run joint investigations where specific parties such as Trade Union reps are invited to be part of the investigation team.

Finally, internal investigations can always be accused of bias, so the golden rule is that managers do not investigate their own staff. In small organisations this is not always possible, and if a manager is investigating someone in their team, this needs to be noted along with steps to minimise any perceived bias.

1.2.2 What Do We Investigate?

There are two broad categories of investigation.

1.2.3 Category One

The investigation into the causes of accidents, incidents and near misses. In the UK, RIDDOR regulations provide a statutory requirement to report accidents and incidents. Insurance companies also require an investigation to be carried out to determine liability, whether it lies with the organisation or with the individual.

The purpose of the investigation is to find out what happened, why it happened and then to make recommendations to prevent a reoccurrence.

1.2.4 Category Two

The investigation into the causes of breaches of HR policy and procedure, and contractual obligations. This is a wide category and includes;

- i Capability and poor performance
- ii Conduct and behavioural issues
- iii Issues of discrimination, harassment and bullying
- iv Absence from work that is not authorised including long and short term illness

These investigations can be much more sensitive and may involve accusations of a highly emotive nature. The purpose of the investigation is to find a resolution to the issue, and this can only be done when all parties positions are fully understood.

It is also these investigations that are most likely to result in disciplinary action, action that must be fair. When emotions are high care must be taken not to take a 'black and white' view in the drive to be objective.

The investigation into accidents and incidents will usually involve issues of conduct or capability, and so it is likely that corrective action will be taken. This provides a problem, because if at the end of every investigation someone is seen to be punished, then future investigations will be hampered by a reluctance to co-operate.

However, if no one is held accountable for actions, poor behaviours become the norm, and the incident being investigated will happen again, possibly with more serious consequences. The investigator needs to recommend actions that will correct the situation and these actions need to address the skills, knowledge and attitude of those involved.

In both types of investigation, the purpose is to prevent reoccurrence, and any recommendations of action must be designed with the intention of correcting bad behaviours.

Exercise: Write down one example of each type of investigation from your own organisation:

1.2.5 What Are the Basic Skills Required?

The basic skills of investigation reflect those of good managers. This is not an exhaustive list, but does cover the key skills:

- The ability to ask the right questions
- Listening, interpretation and summarising
- Planning and organisation
- Strong influencing and high assertiveness
- The ability to remain calm
- Judgement and discretion
- Rapport building
- Report writing
- Presentation skills
- Knowledge of procedures
- Evidential photography
- Tenacity



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These are all skills that can be learned and will be honed with time and experience. However, I always get asked about the key skill, what is it that all the best investigators have, and to me it is one thing.

Curiosity

Curiosity takes you beyond the mechanics of an investigation and starts to get to the depths of ‘why’. I always want to know ‘why’. Why did a person behave in a certain way? Why are the procedures not followed? Why is one person bullied but not someone else, and why did a perfectly good and highly regarded manager do what he did?

If an investigator gets to the heart of the matter, then the recommendations will make sense and improve the organisation. If not, there will be a recurrence, or questions will remain, and more time will be spent trying to find out why, again.

Exercise: What skills do you currently have that make you suitable to be an investigator, and what skills do you need to develop?

1.3 The Burden of Proof

In criminal investigations, the burden of proof is “Beyond All Reasonable Doubt” where it must be shown that there is absolute proof that a crime was committed. Most investigators start life as police officers of one type or other and as they move from law enforcement into industry their skills get used appropriately.

Criminal law does apply to companies, primarily with the breach of Health and Safety legislation, but in these cases it is highly likely that professional investigators (from the HSE, Environment Agency, Local fire Authority etc.) and the police will be conducting any enquiries.

Employment Equality legislation forms the basis of investigations conducted by managers and appointed persons, and is civil law. This changes the burden of proof to the “Balance of Probabilities”.

This means that a court decides *how likely* is it that an event occurred. Given that organisations are deemed guilty at the start of the hearing, and are there to prove that they were fair, the claimant only has to show that it was likely they were treated unfairly, not that they were actually treated unfairly.

This makes it much harder to prove an organisation is innocent, because patterns of behaviour will count more significant than actual behaviour. The organisation must show that it has behaved consistently.

There is one more consideration to be mentioned, that of *Vicarious Liability*. This means that an organisation is responsible for the acts of its employees, and gives a reason in law to all employees that they were doing what they were told, or what everyone else does.

This may be true. People act on the instructions of management, and use procedures in a way that is acceptable to the management. An incident that occurs despite people following procedures and management instruction the people involved have protection under vicarious liability.

If though the incident is caused by people acting contrary to procedures and management instruction, the investigators must show that the adverse behaviour is the act of individuals and not company policy.

Experienced investigators have long recognised the key differences between in-organisation investigations and criminal investigations. The process is similar, but the skill set much more subtle. Unlike the Police, managers have no right to detain and while all employees have a duty of co-operation, getting the information needed is more about influencing skills than levels of authority.

1.4 Balancing Action

Investigations are carried out to prevent recurrence of a situation that had an adverse impact (or potential adverse impact in the case of a near miss) on one or more people. The investigation must establish what happened and why it happened and then make recommendations that will prevent recurrence, or mitigate the impact if recurrence cannot be prevented.

This requires a fine balancing act. Too many organisations rewrite procedures following investigations, only to find the change has no impact at all in preventing recurrence.

This is because the prime cause of any incident is people. People follow procedures or decide not to. People make mistakes. People have lapses of concentration. People get angry or emotional in other ways.

As the investigation is a result of an adverse incident, peoples' behaviours, skills and decision making will come under scrutiny, and where their behaviour or decisions have fallen below the standards expected, it is likely that the corrective action will result in a disciplinary hearing.

The danger is that by being robust in managing the outcomes of investigations they create an 'us and them' culture where people become suspicious of investigations and reluctant to contribute. The flip side though is that where organisations are less robust in following recommendations, people become complacent in their own actions and more incidents happen.

Getting this balance right is a challenge for any organisation but in making decisions the prime motive must be to prevent recurrence, and then to manage any negative cultural impact as an ongoing issue. If done well though, everyone in the business understands the standards that apply to them, and the consequences should their actions fall below the levels required.

Our final part of this introduction to investigations then is to understand the process. This will form the basis for the rest of this book, with one chapter dedicated to each section.

1.5 The Investigation Process



Key Points

- Investigations should be done by people with the authority to ask the right questions
- There are two broad types of investigation; investigating accidents and incidents and investigating breaches of HR policy
- The key skill of an investigator is that of curiosity
- Investigators work on “the balance of probabilities”
- There are significant differences between criminal investigations and in-organisation investigations
- An investigator will present their findings, HR/management will make the decision on what follow up action will result.

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2 Manage the Scene



Scene management is most closely associated with accidents, incidents and near misses, but location should always be considered. Although this chapter centres on the investigation of accidents, the same principles apply when investigating conduct issues. Once we have been called to an incident there are a set of initial steps that must be carried out. Get these wrong, and the investigation, and more significantly, the final outcome, may be put at risk.

Something has happened....

You get the call; Bill Smith has fallen off a ladder and is hurt. Can you come straight away?

You stop what you are doing and head to the area. What should be going through your mind at this point? Use the space provided to list your thoughts.



On the way to the site you need to locate a camera. Photographs of the scene are going to be very important, especially if it has yet to be disturbed. On the way you need to settle on an initial plan:

1. Contact a First Aider for initial treatment
2. Establish if the injured party requires hospital treatment
3. Establish who is involved
4. Who else was in the area at the time?
5. Are there any witnesses?
6. Who was there but did not witness anything?
7. What equipment is involved?
8. Was the equipment properly maintained and working correctly?
9. Has the equipment been used correctly?
10. Have procedures been followed?

How Do HR Investigations Differ?

With an accident, immediate action at the scene is vital. There is usually a time element involved, with pressure to return the scene to a working operation.

HR investigations tend to focus around conduct, so peoples' behaviour. Therefore, there is no pressure to get to a scene and to take immediate actions. A visit to the area(s) where the alleged incidents took place is still useful, but can be done when it suits the investigator.

Assuming the area has been safe, as you approach the scene stop and assess what is before you. If you can, take a photograph, but have a good look at the scene and surrounding area and notice what is usual and what is unusual.

2.1 First Aid

First Aid should be given to the casualty. Establish if the casualty requires hospital treatment or not.

- a) If the casualty requires hospital treatment arrange for an ambulance or, if your company procedures allow this, transportation to the local hospital.
- b) Many businesses have a standard procedure to send any person hurt to hospital, regardless of the seriousness of the injury. Where a policy of this nature is not in place, the decision to go to hospital or not lies with the casualty. The First Aider or manager can make a recommendation, but the decision lies with the casualty.
- c) A company representative should accompany the casualty, usually the First Aider so they can inform hospital staff of any treatment provided and details of what happened.
- d) Arrange contact with Next of Kin
- e) DO NOT question the casualty at this stage about the accident. Any information provided could be deemed in court as given under duress.
- f) While you cannot question the casualty, those involved often explain what happened to them. Note down anything that is said to you, especially if they tell you what happened. Note the condition they were in when they told you this, especially if they are in severe pain or discomfort

2.2 Photographs

Photographs tell a story and reveal details missed in personal descriptions. They also act as a reminder many months later when the case is being reviewed. Poor photo sets can cost companies cases in court, and a good set can help those not familiar with your workplace understand what happened.

What can you tell from this photograph?



Pic. 1

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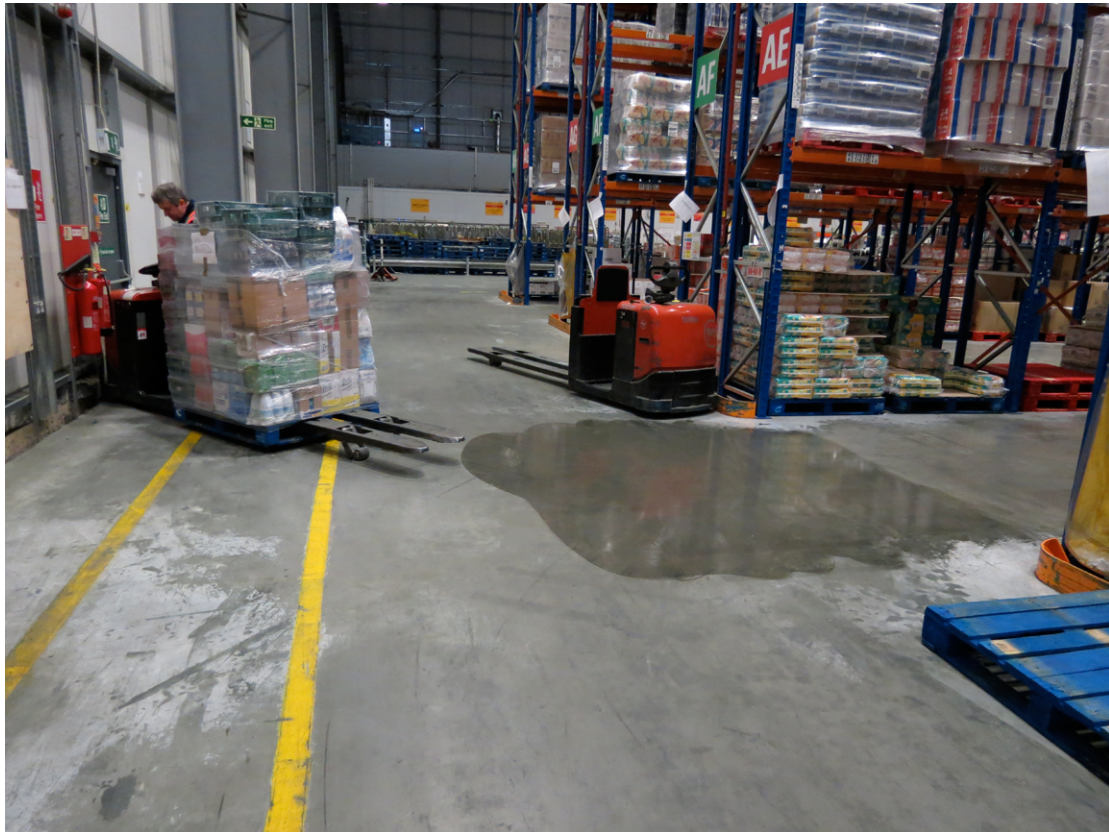
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- What time of year is it? Summer, Winter, Spring, Autumn?
- Where was the picture taken?
- What activity has the man been involved in?
- Can you tell anything about his mode of transport?

The majority of the viewers will not know your workplace or its layout. Insurance people, H&S professionals, lawyers, judges, senior managers, HR and other people who have an interest in the case, but do not work at your location will look at the pictures. If the pictures do not make sense, that is when they want to visit your site and see for themselves, and these may be visits you do not want.

The photo set must then tell a story. Start wide, showing the entire scene, then narrow in to show details. Before taking pictures, ensure the date and time functions are either turned off, or are accurate.



Pic 2

Show the entire scene



Pic 3



Pic 4

Get details such as equipment numbers



Pic 5

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Pic 6

Feet provide scale. Note the boot size, in this case a size 9.

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28/2/12	22:00	887	5820	[Signature]	6:00	5820
01/03/12	06:00	2182	5821	[Signature]	14:00	5823
01/03/12	14:00	1965	5823	[Signature]		
01/03/12	22:00	8635	5825	POG	06:00	5826
2/3/12	06:00	9921	5826	[Signature]	06:30	5826
2/3/12	11:50	RC	5826	R. WJ		

Pic 7

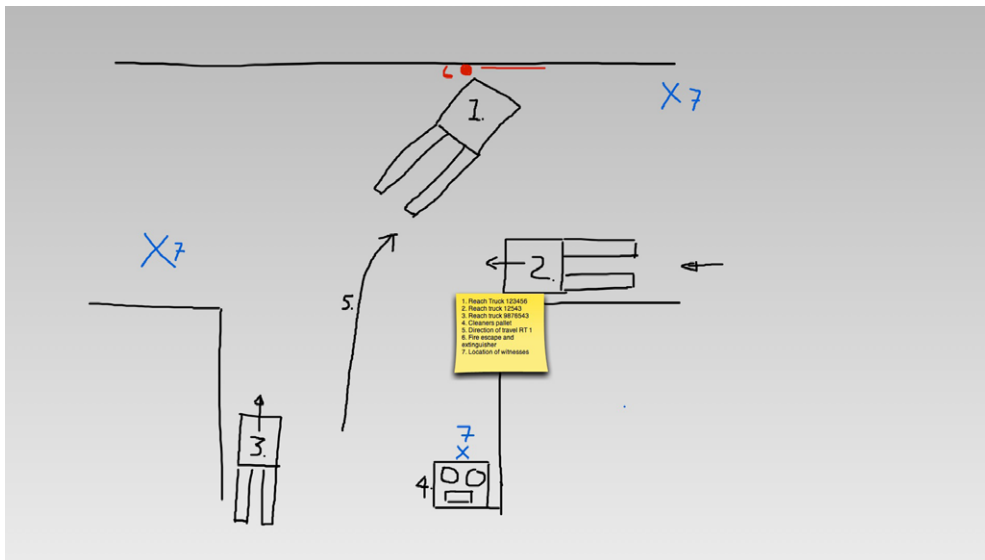
Photograph any documents

Exercise: Take and file a set of standard photographs that can be used for any investigation. Take the view of someone who has no knowledge of who you are and what you do. What would they want to know? Consider the following as examples:

- Outside shots
- Key location shots
- Plant and equipment

2.3 Sketches

As well as the photographs always do a sketch, marking the key sections and points such as direction of travel, locations of people and pieces of equipment. If for some reason the photographs get lost or corrupted the sketch will provide a back up. For large scenes you can also note on the sketch photographic reference. Together, they will give everyone an accurate picture of what you saw on initial attendance.



2.4 Witnesses

Identify everyone who was in the area and ask what he or she witnessed. If they are witnesses to the incident arrange to take a statement from them recording what they:

- Saw
- Heard
- Smelt
- Felt
- What they were doing at the time
- Where they were standing at the time
- What alerted them to the incident

Do this as soon as you can, while the memory is fresh and before they have had a chance to discuss their experience with other people. When people start to discuss the incident, fresh recollections will get tainted with the views of others and key details can be lost.

If time is tight, or there is not a suitable location, record brief details then arrange to take a full statement at a more appropriate time. If you do this, include both accounts in the investigation pack.

You will find that the majority of people 'saw nothing', even sometimes when they were right next to the injured party! In a criminal investigation, the Police can use detailed questions to get the story, and in extremes can charge uncooperative witnesses with obstruction of justice.

This is not something that company investigators can do. In these cases we record statements stating clearly that the person saw nothing. These statements are very important because there are many incidents of witnesses who at the time said that they did not see anything, but later have a memory recall. Usually, this memory recall is in favour of the applicant when they are suing your business for compensation.

Many businesses have a form in their accident packs for this purpose. An example is in the appendices and those who were in the area but state that they did not witness the incident sign to confirm this. The form saves time and energy. See Appendix C.

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Should at a later date they have a memory recall, in court they will have to explain their two versions of events, thus reducing their credibility.

2.5 Equipment

Once all the human aspects have been dealt with, and the photographs checked, any equipment involved needs to be checked for faults. This means isolating the equipment so that it cannot be used, and completing any paperwork your business requires. In doing this be specific so that engineers know what to check. Just asking for an inspection may take some time, especially for complex equipment.

If you put a brief description of what happened, then ask for specific areas such as brakes and steering to be checked, and with a deadline, you are more likely to get a specific and timely report back from the engineers. See Appendix D.

Where outside agencies are used, note the time of request, time of completion, who did the inspection, who wrote the report, the date of return and any costs incurred. Also, be aware that manufacturers will be cautious of their own liability so it will be worth having a discussion with them about any tests and findings they will do and publicise.

2.5.1 Finally

Ensure the area is clean and safe for people to work in, and return the scene to working use. In most cases, the steps described will take 30 minutes, minimising disruption to work, but ensuring your investigation is started on sound foundations.

The exception to this is if the area may be considered a crime scene. This may be the case for severe (life changing) injuries and fatalities.

Remember, this is not the investigation, just the initial steps at the scene. Now it is time to go and plan the investigation, but by now you:

- Know who was involved, what their injuries are, treatment and if they need hospital care
- Know what equipment was involved
- Established who was in the area at the time, who are witnesses and who saw nothing
- Have a set of photographs and a sketch
- Have initial witness statements
- Have arranged inspection of any equipment involved.

Key Points

- On route to the scene get a camera
- On arrival, stop and observe the scene
- Manage First Aid
- Take photographs, starting wide then getting details
- Draw a sketch
- Manage the witnesses, noting who was there at the time, who are witnesses and who saw nothing
- Arrange for equipment involved to be inspected



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3 Plan the Investigation





Managing the scene is like managing chaos, so now, before we go and do anything else, we need to sit down in a quiet place, understand what we have so far, and then plan our next steps.

This is the stage that few people do, and is the reason so many investigations go wrong. As ever, we have some key steps to go through.

3.1 What do you have?

From your management of the scene you should have some or all of the following:

- Information on who was involved and who was in the area at the time
- Know about injuries, what first aid was given and if hospitals have been involved
- Have a list of witnesses with initial statements of what they saw or did not see
- Know about equipment and have submitted any maintenance or inspection requests
- Have a set of photographs
- Have a sketch

3.2 What About HR Investigations?

The only difference is that there is no major scene to worry about. The investigator still needs to sit down and establish what is known and what needs to be established. Most likely what is already established is:

- Who was involved
- Who works in the area
- Where the incident took place
- The nature of the allegation

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Remember, in an accident investigation the investigator will be looking into the causes of the accident, and that will involve people in some way. That means that an accident investigation is AUTOMATICALLY a HR investigation. An accident investigation will bring with it more hard facts than a pure HR investigation, and often because of this are less delicate in the way they need to be managed.

You need to organise this information and start your investigation file. There should only ever be one investigation file with a control sheet that shows who has done what in contributing to the investigation and locations of any files held on computers, the cloud or portable drives.

3.3 Points to Prove

For investigations, there are two aspects of law; what the law or clause actually says, and what you as the investigator, have to prove. The statute is easy and trainee police personnel are taught many legal definitions such as Theft, Criminal Damage and lots of Traffic Law. However, knowing the law is pointless if you don't know what you have to prove in a court of law to secure a conviction.

As an example consider the definition of theft.

'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it'.

So if an investigator is looking into an allegation of theft, to obtain a conviction the following points must be proven:

- There was **property**
- The property was **owned by someone** and there is proof of ownership (*property belonging to another*)
- The property was **taken by another person** (*appropriated*)
- That person **did not have the permission** of the owner to take the property (*dishonest*)
- That person **did not intend to return** the property to the owner (*intention to permanently deprive*)

These points to prove form the foundations of the investigation, and allow the investigator to decide what is useful information.

Company policies provide the points to prove. Remember though the difference in civil law is the burden of proof, that of 'balance of probabilities', and that in employment terms, it is up to the business to prove it is innocent and has behaved correctly. This means that patterns of behaviour and documentary evidence showing audit trails of company actions have far greater significance than they might otherwise be.

We are also trying to prevent a recurrence of the incident, and to do this we must have accurate information that drive quality decision making.

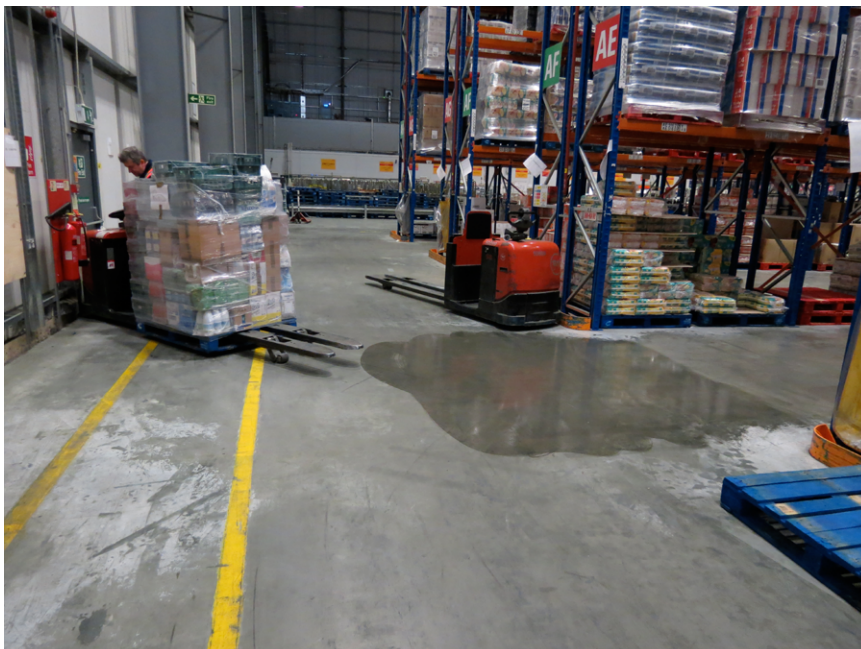
HR Example of Points to Prove

An allegation has been made that a male employee has sexually harassed a female colleague. This is classified as gross misconduct and if proven could mean the male employee is summarily dismissed. What then does the investigator have to prove?

- That the two have some form of working relationship, direct or indirect. If there is no working relationship either as a colleague or a customer relationship, then the business has no liability.
- The male employee has behaved in a way that the female colleague finds offensive. What was the behaviour, what was said or inferred. What form did it take?
- The behaviour has continued over a period of time. It could be one instance, or several.

3.4 Photographs

Take a careful look through the photographs you have taken and write down all the questions they present. For example:



- Is the stock loaded correctly?
- Where have the two trucks come from and what was their journey?
- What procedures are there for using the equipment and is there a 'safe-system-of-work'?
- What training do people get?
- Where they being driven appropriately?
- What authority is required to drive?
- How was the wet patch created?
- How long since it was created?
- Why are there no warning signs?
- What supervision was there?

When looking at procedures we check:

- Do they EXIST (E)
- Are they ADEQUATE (A)
- Are they being USED (U)

This is known as the 'French Water Test', as EAU is French for water.

You will end up with a set of questions that if answered well will provide the detail information for a quality decision to be made.

3.5 Objectives

Any investigation has five fundamental questions that must be answered.

- i. What happened?
- ii. What should have happened?
- iii. What training has been given to individuals?
- iv. What did the person(s) do differently from the procedures and training given?
- v. Why did they act differently?



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Let us look at these in more detail:

- i. **What happened?** This is a full description of the incident put together through all the witness testimonies and any other source of information that will help.
- ii. **What should have happened?** The policies, procedures and safe-systems-of-work, if in existence, will set out what should have happened at the time. If they do not exist and there is no clear method, then you are beginning to find out why the incident happened.
- iii. **What training has been given?** Training may include skills training, knowledge training or awareness training. The question here is did people know what they were supposed to do? Did they understand the standards of behaviour, the sort of things they can and cannot do, and do they understand the consequences of not meeting those standards. If people were not aware, or were not trained adequately, then you are finding contributory or prime causes of the incident.
- iv. **What did the person(s) do differently from the procedures and training given?** If questions two and three show that everything is in order, that all policies, procedures and safe-systems-of-work Exist, are Adequate and are Used, that full training has been given and everyone is fully aware, then what has happened is due to individuals not doing what they were supposed to do. The investigation must show clearly what these differences are.
- v. **Why did they act differently?** There are many reasons why procedures are not followed. It could be that no one follows them, or managers had identified special circumstances that justified the bypassing of correct methodology. It could also be because people think they know better, or prefer a previous method. People also just do daft things that cannot be legislated for. Whatever the reason, the investigation must establish clearly why the correct way of doing things was not done.

Answering these questions will allow you to make sound recommendations that will prevent what happened happening again and facilitate high quality decisions on what corrective action will be taken.

Exercise: Using the example of lateness and a time when you were late for work, apply the five questions. Alternatively, interview a close colleague or friend.

3.6 Interview Planning

The initial 'at-scene' investigation identified who was there and who was not there. You should also have taken elimination statements from those who state they have not seen or heard anything.

Plan whom you need to speak to and who you need formal statements from. These may include those involved in training and maintenance, HR staff and those with specific managerial or supervisory responsibilities.

The purpose of interviewing is to gain knowledge of how processes and procedures are actually applied and find what may be common practice despite being contrary to a specific policy. This will help you gather the information to meet your points to prove.

3.7 Documentation

All companies have documentation and this needs to be checked. The investigator must be familiar with all documents, policies and procedures that may apply. These could include:

- Training records
- Disciplinary records
- Time and Attendance records
- Maintenance records
- Records of past accidents/incidents
- Personal history

It may take time to gather all the documentary evidence, and permissions may need to be obtained. These need to be actioned at the earliest opportunity to avoid any unnecessary delays or delegated with clear deadlines to others in the investigation team, or to people completing one task for the investigation.

Exercise: Using the example of lateness, what documentation would you need to check if investigating a case of persistent lateness.

3.8 Who Needs to be Involved

Complex investigations, or those that are time dependant may require a team of investigators, or the requirement for specific people to complete tasks they have expertise in. The identities of everyone involved must be recorded for continuity and as a record of how the investigation was conducted.

The investigator needs to have sufficient authority to see all relevant information and interview all people who can contribute. However, for senior managers and directors, a senior HR person (or an appropriate senior appointee) may be more appropriate to conduct interviews. This needs to be planned to allow sufficient time for briefing and full diaries.

Finally, in global businesses consideration must be given to the method of interviews, cultural and language sensitivities and if interpreters have to be involved.

3.9 Reporting

The result of the investigation will be a report recommending actions to prevent a recurrence of the incident in future. If the investigation is into an accident, in the UK this will mean that RIDDOR (Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations) will have to be complied with.

Also companies operate in hierarchies with different levels of privilege when it comes to accessing confidential information. It may be necessary to produce different versions of a report that reflect authority levels.

3.10 Terms of Reference

What must be absolutely clear are the terms of reference for the investigation, what it is to cover and what it is not to cover. Investigations can easily drift into areas that are not of its concern, or areas that an organisation does not want to be investigated. If the terms of reference hamper the investigation then this can be noted on the final report.

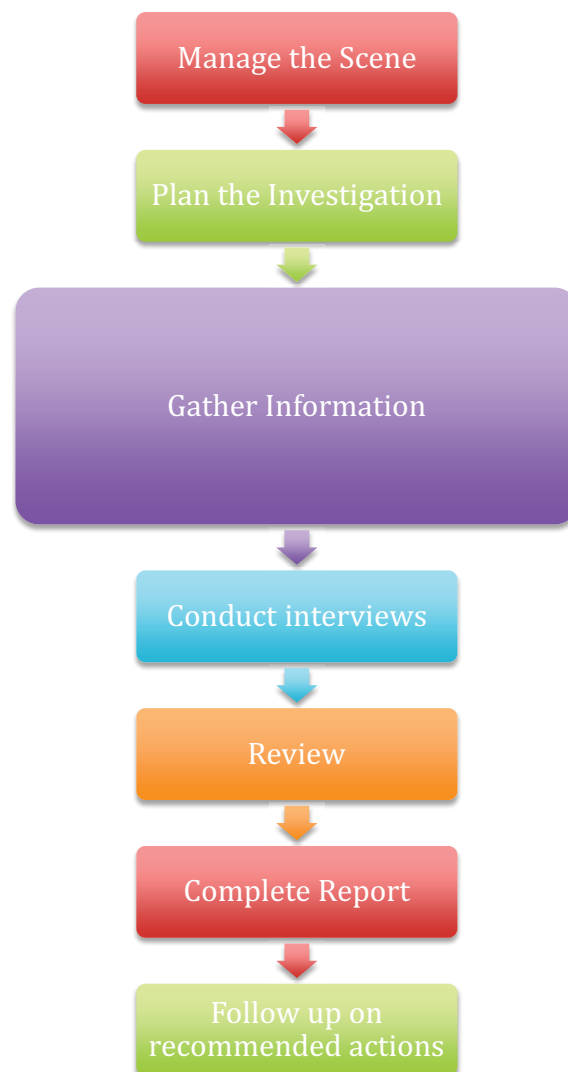
3.11 Control Sheet

In the appendices you will find an example control sheet. This helps to plan the investigation, track progress and note who has been involved. It can also show where delays occur and the reasons for delays.

Key Points

- Plan the investigation carefully
- Be clear on Points to Prove
- Assess what information you have, and what you need
- Be clear on objectives and terms of reference
- Use a control sheet
- Identify who needs to be involved
- Plan who needs to be interviewed and what documentation needs to be examined.

4 Gather Information



Having planned the investigation and knowing what has to be proven, the investigator is now in a position to gather all the supporting evidence required.

4.1 Procedures and Documentary Evidence

It is crucial that you know and understand what procedures apply in any case. It is likely that will need to check:

- Procedures for handling equipment
- HR policies on discipline, grievance and any associated policies
- Absence from work policy
- RIDDOR requirements (UK only)
- Management procedures
- Safe-systems-of-work

From the policies and procedures you will get to understand:

- What should have happened
- Methods, processes and safe systems of work
- Mandatory and optional training
- Authorities and qualifications to act
- If the policies, procedures and training EXISTED, were ADEQUATE and were USED
- If there has been any breach of process, procedure or behavioural standards you have to prove

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Here is a cautionary tale about procedures. A manager was investigated after it was alleged he bullied a member of staff. The investigation found that he had bullied a number of people and he was dismissed for discrimination. The manager appealed but the appeal was turned down and the original decision upheld.

The manager took the company to an Employment Tribunal claiming unfair dismissal. At the tribunal, the manager admitted he was a bully, but stated that he was 'an equal opportunities' bully. He explained that he was not prejudiced in any way, that he bullied everyone regardless of sex, race etc. and therefore was not guilty of discrimination, the reason he was dismissed.

The tribunal found in his favour, as he had not been dismissed for harassment. To be dismissed for discrimination when he had not discriminated was clearly unfair.

As well as knowing the procedures an investigator must decide on the documentary evidence needed. This may include:

- Training records
- Disciplinary records
- Time and Attendance records
- Maintenance records
- Records of past accidents/incidents

4.2 What Are You Looking For?

Training Records:

- What training has taken place
- Where the training was delivered and by whom
- The content covered relative to the incident
- Dates, times, duration
- Who delivered the training?
- Any coaching?
- Expiry dates
- What version/issue (if any) of the training did the person receive?
- Tests, examinations and results
- Any other evaluation

Disciplinary records:

- Any breaches of discipline?
- Any grievances lodged or received
- Performance records
- Sanctions
- Dates and durations
- Any patterns or persistent breaches
- Similarities to current investigation

Time and Attendance records

- Patterns of lost time
- Short and long term absence
- Reasons for absence
- Were they on site at the time of the incident

Maintenance records

- History of equipment
- Service and maintenance schedules
- Statutory inspections (if applicable)
- Certifications
- Testing records
- On-time completion
- Post accident examination

Records of past accidents/incidents

- What happened
- Who was involved
- What recommendations were made
- Were recommendations implemented?
- What follow up communication took place?

Exercise: You have received a grievance from a male member of staff that two female colleagues are sexually harassing him. He alleges that they tell sexually orientated jokes, and make off-hand remarks about his homosexuality, even though he is heterosexual. The two ladies concerned maintain that this is just office banter and that their male colleague is being over sensitive.

What documentary evidence do you need to gather?

4.3 What To Do With The Information Gathered?

As you obtain information, update your investigation record. You will establish:

- What should have happened/not happened
- What training has been provided, when it took place and who attended
- Any past history of all persons involved
- A set of questions the investigation needs to answer
- A list of people to interview

This now allows you to prepare for interview, to establish what you want to find out from each person in your interview plan, and to create a set of questions or areas to explore.

The importance of checking records

A allegation of assault was made by a member of staff alleging that she had been punched by her Team Leader. To support her claim, eleven witnesses came forward, all stating clearly that they had seen the assault, and that the Team Leader had indeed punched the staff member.

Before talking to anyone, the investigating manager checked the time & attendance system, and found that of the eleven witnesses, two were not in work at all that day, and a further two were not on shift at the time the alleged assault took place.


The records also showed that of the remaining seven, five were not on the same floor as the person assaulted, leaving only two who were on shift and in the right area at the time.

Key Points

- Check all procedures relevant to the investigation
- Be clear what procedures are applicable
- Gather documentary evidence
- Interview key people to answer questions around procedures
- Update your investigation control sheet

5 Conduct Interviews




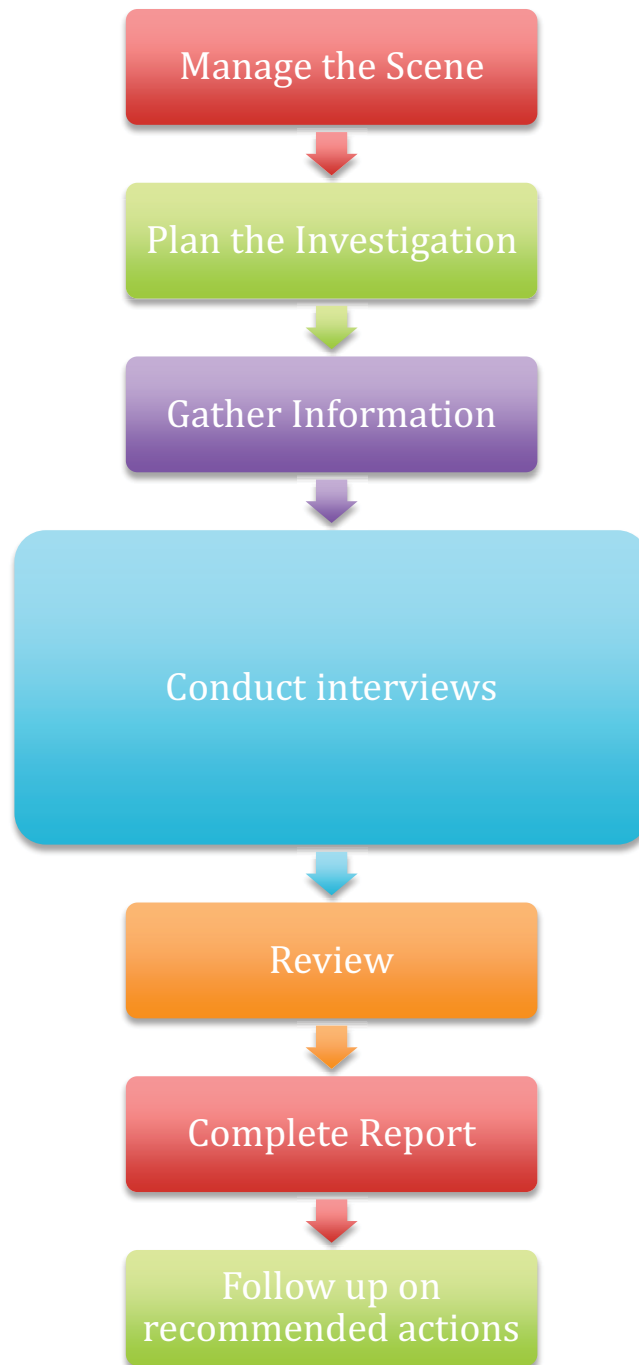
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5.1 Conduct Interviews

By now you should be fully prepared to conduct interviews. This is the most time consuming phase, and potentially the phase that makes or breaks the investigation.

The Basics

As with all interviews there are some basic rules to comply with:

- An investigation is conducted as part of the disciplinary processes so attention must be given to the organisation processes for running interviews.
- Representation is not strictly required; however where individuals may be disciplined as a result of the investigation consider representation for both parties, at all stages.
- Notes should be taken. If the interviewer is highly skilled then they can take notes as well, however a note taker makes life easier.
- Interviews need to be structured and carried out in a neutral location.
- The outcome of all interviews is to complete a signed witness statement.

Why Interview?

An incident took place in a factory, where a worker was hurt using a piece of equipment. It was accepted at the time that the worker had not been following procedures, and he was disciplined and given a Written Warning.

The worker resigned claiming Constructive Dismissal. At the hearing the worker claimed he had been told to use the machine that way by his line manager, and the worker called 20 of his colleagues who all supported his version of events.

In court, the line manager was asked who he spoke to after the incident and the manager admitted that no investigation had been conducted and nobody was interviewed.

The company was forced to accept liability and lost the case. In their review, they accepted that the manager had not instructed workers to breach the safe system of work, and that the staff had agreed their stories prior to the hearing. However, the failure to investigate and interview witnesses meant that in court the company had no information to provide a defence.

5.2 Elimination Statements

At the scene the investigator should have spoken to everyone present to establish what they saw (and/or heard), and if nothing recorded an elimination statement. (See Appendix C for an example) The reason for this is to counter the 'sudden memory gain' that people get when it suits them.

If at a later date they do change their mind and recall what happened, this is generally to the detriment of the company. It is very rare for a case of memory recall to favour the organisation. Memory recall generally comes about after talking to legal representation, but if elimination statements are in place, in court the memory man has to explain the contradictory statements they made.

The reality is that where elimination statements are used, solicitors do not bother with re interviewing those who have completed them because there is no legal credibility in the new statement.

Where a witness does come forward during the investigation, and offers testimony after signing an elimination statement, the investigator can cover the reasons in the interview, and have the witness include the reasons in their statement. Under no circumstances should the investigator remove the person's name from the elimination statement.

Finally, in these circumstances, the investigator must include these facts in their full report.

5.3 Order of Interviews

It is important that investigators interview people in order. The rule is to interview those who have least to say first, and then work inwards. This means that by the time the key people are interviewed, the investigators has all the facts that they need.



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Sources: Keuzegids Master ranking 2013; Elsevier 'Beste Studies' ranking 2012; Financial Times Global Masters in Management ranking 2012

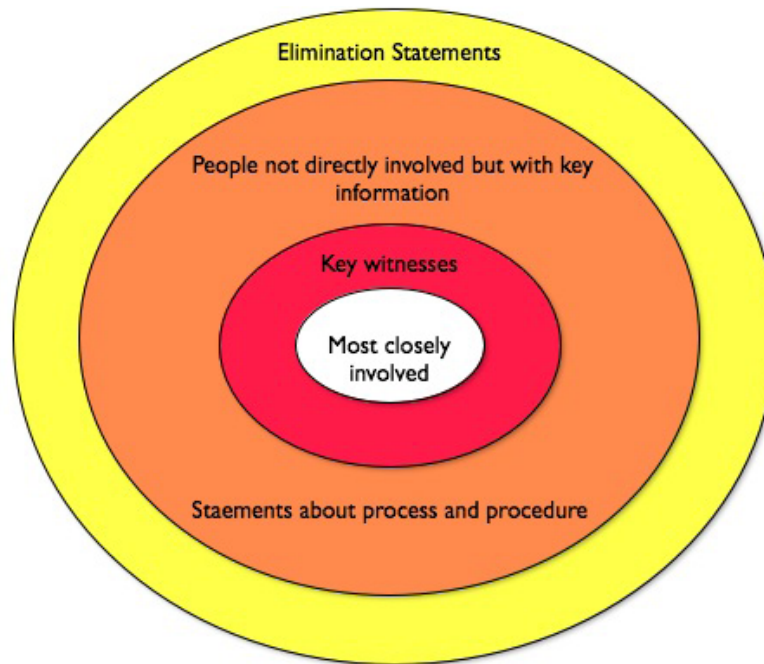
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From the graphic you can see that those most closely involved, so most likely to be subject to disciplinary action as a result of the investigation are interviewed last. When interviewing these people you **MUST** arrange representation otherwise the investigator is open to accusations of applying pressure, making falsehoods or other negative conduct.

It is also possible to go back and interview witnesses as new facts emerge, and this is very common. Many investigators conduct an initial interview with those closest to the event, then go back and do a second interview when they have all the facts. The purpose is to get an accurate account from each person, so don't be afraid to go back and interview again.

5.4 What is Being Established?

The investigation must establish five key areas, and these can always be used as questions. I once witnessed a manager complete an interview with four questions, an interview conducted with witnesses, one of whom was a Union Rep.

The five areas to establish are:

1. What happened?
2. What do the procedures/training say should have happened?
3. What did the person do that was different to the procedures and training?
4. Why did they act differently?
5. What can be done in future to stop the event happening again.

The manager I witnessed asked the following four questions:

1. What happened?
2. What did you learn from your training?
3. What did you do that was contrary to your training?
4. Why did you work contrary to your training?

In this case, an accident occurred involving a fork truck tipping over going round a corner. The driver was driving too fast and his load was not balanced correctly.

5.5 Planning

Before you start the interview make sure you have:

- Checked the procedures
- Written what information you want from the person
- Written the questions you want to ask
- Booked a room where you can interview in private
- Allowed enough time to conduct the interview
- Arranged for any representation

Create a Question Bank

Knowing your points to prove, and having reviewed all documentation and procedures, create a list of questions for each interviewee and attach them to your investigation control sheet. Appendix G has example questions for reference.

5.6 Communication

The movies have been great at showing the ‘good cop/bad cop’ routine, or the ‘maverick’ cop who gets results with unconventional (and probably illegal) methods.

The reality is that interviews are all about building an open relationship between the interviewer and the interviewee, and then being methodical in the questioning process so that all the details are covered voluntarily.

Investigators need excellent communication skills and the ability to build rapport with even the most hostile witness. This requires patience and the explicit understanding of the impact of personal communication.

Setting up the Room

Ideally, you need a light and airy room with water available. Dark, dirt and strong smells are not conducive to sensitive interviewing and can create a intimidating atmosphere. Hot drinks are rarely a good idea, as emotional people have been known to throw their hot drink at the interviewer. Burns from boiling coffee will not help with the investigation!

The best set up is to have a round table, but these are not always available. If using a rectangular table, sit across from the witness to minimise the barrier the desk can represent.

Remember, you need to have the witness as relaxed as possible for them to give you all the details you need.



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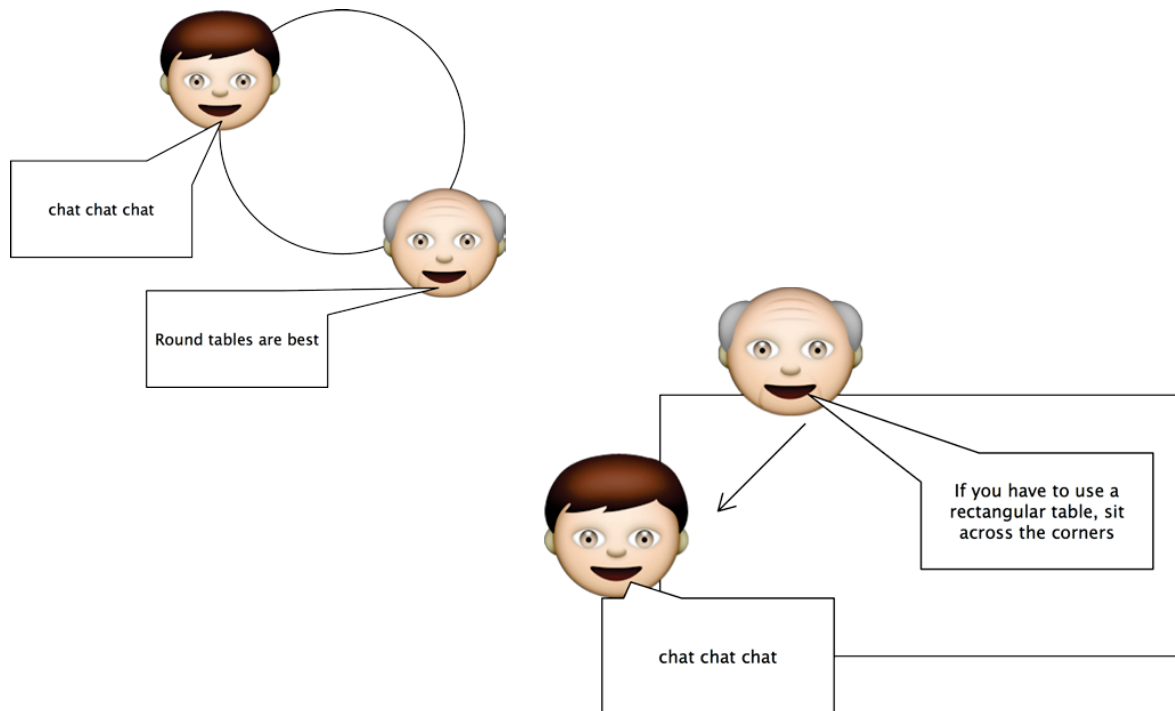
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Personal Communication

How you conduct yourself will have a large bearing on how productive the interview will be. Common mistakes made are:

- Interviewers using tactics learnt from TV cop shows.
- Pointing, accusing and aggressive questioning
- Staring, folded arms and other passive/aggressive body language
- Not allowing enough time and rushing through the statement
- Not asking enough probing questions

Interviewers need to keep their body language neutral or open. The tone of voice should be calm and questions asked at a steady pace. Allow the interview to go at the pace dictated by the interviewee, allowing them time to answer questions fully. If the interview is going to be long, consider taking a short refreshment break, and have water available in the room.

Be comfortable with silence. Ask your question, then allow thinking time and wait for an answer. Probe the answer carefully to make sure you have every detail. Listen out for contradictions and summarise regularly. It is always worth checking information, either through alternate open questions, or through closed questions that confirm details.

You must avoid the impression of using force or authority to gain cooperation. The witness is under no obligation to co-operate, and any behaviour from you that they could deem threatening could mean them terminating the interview, and you losing vital information. Information must be given willingly, which is why taking time to build and maintain rapport is so important.

Exercise: Interview someone close to you about one of the following:

- What they did yesterday?
- Their last holiday/vacation?
- A road accident or near miss they were involved in

At the end of the interview, write an account of their testimony and ask them to check what you have written.

- How close did you get?
- What did you miss?
- Did you add anything or make any assumptions?

5.7 Structuring the Interview

The interview should progress in stages. Knowing the stages will help you keep on track and remain in control.

STAGE ONE – EXPLAIN PURPOSE

Always thank the person for attending and explain that the purpose is to discuss their involvement, or if a witness, what they observed. Explain how long the interview will last, and that at the end you will ask them to write a statement.

To help the person relax it may be worth starting with some general questions about the place of work, or general conversation. There are no hard and fast rules here, but if the person is comfortable with you then they are more likely to give you the information you want.

This is because, in a more relaxed state, the person is thinking about the incident you want to talk about, and not how uncomfortable they feel in the interview, or looking for traps that will catch them out.

At the end of this stage they should be fully aware of the purpose and process, and as comfortable as they can be given the circumstances.

STAGE TWO – ASK QUESTIONS

Ask questions to cover the main areas

- What happened
- What should have happened
- What, if anything was done differently
- What, if anything, the person did differently

Not all witnesses will cover all areas, so make sure you understand before you start what area you are covering.

Questioning should be done chronologically, by establishing a time frame then working forward towards the incident, the actual incident, and the aftermath. Establishing a time line allows you to go back and check details and to put everything in place.

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You will be using questions such as:

- What time did you start work?
- What is your normal routine?
- Tell me what happened?
- Where were you then?
- Where were you going?
- Who was there at that time?
- What happened next?
- What were your duties?
- Tell me about the procedures/safe system of work?
- What training have you had?
- When was your training?
- What is company policy?
- What did you see/hear?
- What brought your attention to...
- How would you expect someone to behave?
- How did you feel?
- What happened just before...?
- What happened afterwards?

These are only example questions and a selection of what could be used.

STAGE THREE – STATEMENT

At the end of the interview you need a statement of the persons account.

STAGE FOUR – NEXT STEPS

Explain what will happen next and if you will want to see them again. Also discuss data protection and confidentiality.

STAGE FIVE – CLOSE

Thank them for attendance

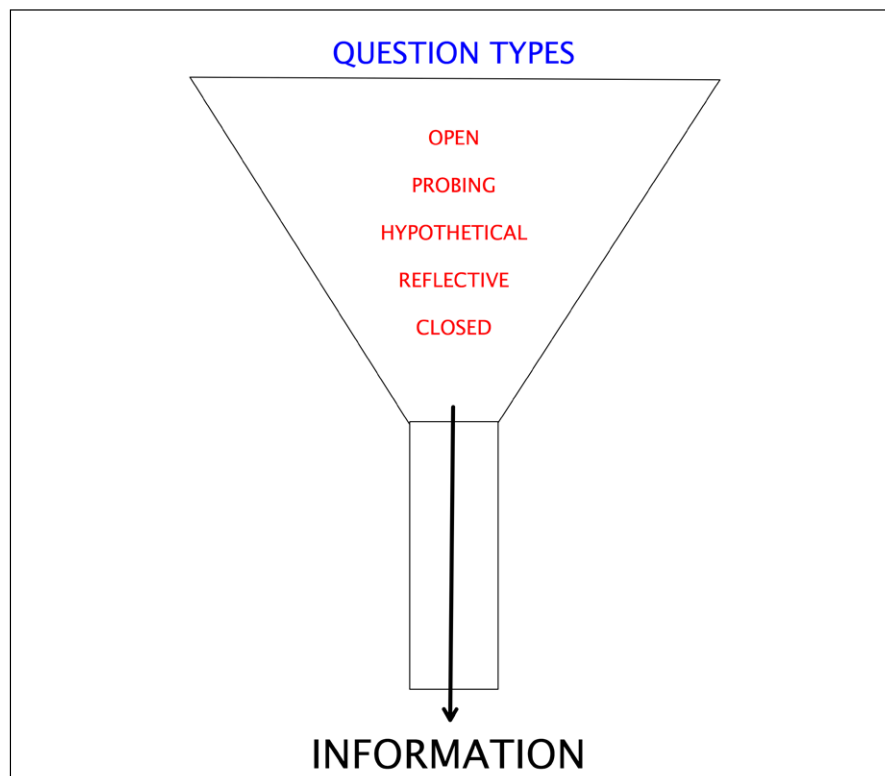
STAGE SIX – UPDATE

Update your notes and Investigation Record.

5.8 Asking Questions

When preparing some training for an organisation, a HR Manager once observed two managers ask over one hundred questions and not get any information. From her observations, the HR Manager realised that while it is useful to know how to use question types well, if you don't know what you are looking for, then you will not recognise the right answer when you get it.

In investigations, we use five types of question:



OPEN: What happened?

PROBING: What happened next? What exactly did you do?

HYPOTHETICAL: What if someone told an offensive joke and everyone laughed except one person; could that be deemed as harassment?

REFLECTIVE: You said that you don't remember what was covered in your training, how long ago was it?

CLOSED: Did you report that your vehicle was faulty?

Remember to establish a timeline, and establish the account in **chronological order**.

5.9 Statements

Statements mean that all those reviewing the investigation who are outside the organisation get a full picture of what happened. These people may include managers, Head Office personnel, insurers and legal professionals. Taking more statements than needed is always better than not taking enough, or worse missing a statement from a vital contributor.

So for every one you interview, get in the habit of having a statement recorded. Organisations are now using standard forms for statements, and some use proforma statements for key people such as HR and H&S who could spend half their working lives being interviewed and giving statements. However, take care that these generic statements do not miss vital information specific to your case.

Appendix H has an example statement.



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We are agreed then, at the end of the interview you need to get a statement. There are some strict guidelines to follow to make sure the statements recorded can be used in any proceedings.

1. **The person making the statement must write it themselves, in their words.**
2. **The statement can be written or recorded if the person has any issues with writing, and they request this service.**
3. **The investigator can ask questions to help draw out key information, help structure and flow.**
4. **The investigator cannot ask for specific details to be included or omitted, and cannot phrase the wording.**
5. **It needs to be an accurate reflection of their testimony.**
6. **The person making the statement must sign it to say that it is an accurate and true account.**
7. **The statement must be signed and dated by everyone present.**

In the past managers have written statements on behalf of witnesses or those under investigation, and then had them signed by the person. The problem here is that managers often use language that the person may not use, and may phrase wording in a certain way. If the investigator writes the statement they can be accused of pressurising the interviewee, or more seriously, writing a false testimony.

Having said this, the statement needs to reflect the person's testimony and cover all the information. This means that the investigator can ask questions to guide the person.

Statements should start at the beginning, then to go through the incident in chronological order, clearly outlining:

- The lead up to the incident
- What the person saw/heard/experienced during the incident
- Any actions they took
- What happened afterwards

“Can you start by explaining who you are, and what you were doing at the time xxxxx happened”

“What drew your attention to XXXXX”

“What happened next”

For HR investigations, where capability is an issue statements may not always be necessary. You may want to consider recording statements from anyone involved in training or developing policy, or at least having standard ones available, but for capability issues (do they have the skills and knowledge to do the job) it is unlikely that you are going to record statements of everyone.

Conduct issues are different because they involve people behaving in a way the goes against what the organisation wants. Poor conduct usually means that someone has suffered, which could be the reputation of the company, or someone feeling isolated, offended or abused.

Then it will be necessary to record statements and in addition to what has been outlined above, include:

- A description of the behaviour
- What was said
- Who said what
- Who was present
- How people reacted
- How the statement provider reacted
- How they felt
- Why they reacted/felt the way they did

“Can you start by explaining who you are, and what you were doing at the time xxxxx happened”

“What drew your attention to XXXXX”

“What happened next”

Never tell a witness what to write, only use questions to help get the detail that is necessary and to get the story to flow. However, if the person hasn't used lots of detail in the discussion, then the statement will reflect the way they explained their view.

The thing to remember is that the statements may be used in court, and if the person is called, and the way they conduct themselves in court is contrary to the way the statement is written, the conclusion can be drawn that the investigator either pressurised the person or unduly influenced the person to get the information they want. This will raise question marks over the investigation and the conduct of the investigator.

5.10 Note Taking

All interviews must have a written record. The investigator can take the notes during the interview, but best practice is to have a note taker. The notes are a record of what was said, but do not have to be a word for word account. Where this is attempted, the pace of the interview is dictated by the note taker, and it can be hard to maintain a strong rapport if the interview is constantly interrupted by the note taker who is struggling to keep up.

At the end of the interview, everyone present needs to sign the notes as an accurate record of the conversation.

The interviews are the most critical part of the investigation. Skilled interviewers put people at ease in what is a formal, and potentially intimidating situation, and through structure, good questions and knowing what they have to prove, get the right information from a witness happy to co-operate.

Key Points

- Plan interviews carefully
- Understand the objective of each interview
- Create a bank of questions to use
- Manage your personal communication
- Use a variety of question types
- The purpose of the interview is to record a statement
- The interviewee must write the statement in their own words
- The interviewer can ask questions to make the statement clear.

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6 Review



6.1 Review the Investigation

This is a step that should happen as you progress through the investigation, but once all the interviews have been completed it makes sense to review what you have against the original investigation plan.

By now you will:

- Have managed the scene, taken initial statements, elimination statements and photographs
- Have requested inspections on any vehicles or equipment involved
- Examined documents including training records, policies and procedures and personal files
- Conducted interviews and have statements from everyone involved, working from the outside in

By now you should know:

- Who was involved
- What was seen and heard by witnesses
- What was supposed to happen according to procedures and training
- What actually happened
- A chronology of events
- What damage was caused
- Details of injuries and treatments
- What happened as a result of the incident
- Why those involved behaved as they did
- Why those directly impacted by the events were effected as they were
- Where responsibility lies
- Any legal implications

The point of the review is to check everything has been covered and all information capable of being known is known. A thorough review means that when the report is written it will be thorough and not miss any vital details.

6.2 Things to check:

- Are the photographs good enough for those who do not work in the organisation but will be involved in follow up processes. Consider insurance professionals, legal representatives, H&S officers, senior managers, company personnel not employed at your location.
- Is everyone who completed elimination statements still happy with this status, or do they want to make a fuller statement
- Are all the procedures checked the latest versions and are any due for revision or update
- Has everyone been spoken to who can make a contribution to the investigation?
- Does anyone need to be re-interviewed?

Before writing the report complete one final review. This is best achieved through discussion with someone outside of the investigation, but not involved in any way with the case.

The purpose of the investigation is to present information about the incident with recommendations for actions that will prevent the incident happening again.

Before writing the report you should know your recommendations and have all the evidence you need to justify what you say.

Ultimately it will be down to other people to make the decisions and the quality of your investigation will have a direct impact on the quality of the decision made.

Key Points

- The investigation should be reviewed at every step
- Before completing the report, complete a final review



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7 Complete Report



7.1 Complete the Report

The report should tell someone without intimate knowledge of your operation what happened in a way it is easy for him or her to understand. It should not be written on the assumption that the reader knows about your business and the subtleties of the operation.

For this reason, investigators often write two versions of a report, one for immediate action by local managers, and one for the wider population. To make life easier for the wider report, include standard plans of the building notated accordingly, and put in references to policies and procedures that can be referred to rather than rewriting the policy in the report.

What makes a good report?

- Make it easy to read – it doesn't matter which type of report is being produced, if it is easy to read it will get read, if not it will not. Everyone requested to read the report is busy with lots of conflicting priorities, so making it easy to read helps everyone.
- Use structure, with a beginning, middle and end that makes the story flow in a logical and chronological way.
- Make use of appendices – add policies, records and other supporting documents as appendices and make reference to them in the main text
- Use photos and diagrams – saves on writing and much easier to read
- Include an executive summary – sometimes this is all the well informed need to read
- Put the recommendations at the beginning – the purpose of investigations are to make sure what happened will not be repeated, and is the most important piece of information.

7.2 Structure of the Report

Title and contents page

Executive Summary

1. Brief description of what happened and who was directly involved
2. A summary of the findings from the investigation
3. A list of recommendations

Main Report

1. Summary of events in chronological order
2. Description of what should have happened had procedures been followed
3. A description of those directly involved, what they did and the result of their actions
4. Summary of what people did that was different/contrary to policies, procedures and training
5. List of witnesses, where they were at the time and what they saw/heard
6. List of support witnesses and the contribution made to the investigation
7. The full findings of the investigation
8. A full list of recommendations, objectives and timings to resolve the issues identified and prevent reoccurrence
9. Identification of the investigation team and any potential conflict of interest and how they were overcome
10. The appendices

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7.3 Recommendations

If the objective of an investigation is to prevent what happened occurring again, then the recommendations are crucial to the achievement of that objective.

A cautionary tale about recommendations

A major international organisation was strong on investigations with the corporate objective of achieving zero lost hours to accidents. Every time an incident happened, regardless of seriousness, a full investigation was launched and recommendations made.

Nothing happened. In fact, not only did accident rates fail to fall, in many sites they actually increased.

An investigation was launched, which discovered that every investigation had two standard recommendations.

1. Rewrite the procedures
2. Retrain the staff

At the outset it seemed reasonable, however, there are three massive flaws in these two recommendations.

- a) It doesn't matter how good procedures are, it is people who follow them. If staff do not follow a procedure it is unlikely they will follow a new one. It is the enforcement of procedures that needs to be looked at, not the actual procedure.
- b) Staff in many of the locations soon learned that if they wanted two weeks off the shop floor, have a minor accident. On being sent for retraining, the trainers would soon discover that the individual had all the skills and knowledge needed, and so would not bother to retrain. As the individual couldn't go back to work, they were left alone until the two weeks was up.

When considering recommendations you have to think about the impact. Here are some common recommendations with associated impacts.

Re-Train specific staff	<p>Only works if the staff were not trained correctly in the first place. If this is the case, then responsibility lies with line management for not ensuring staff were adequately trained.</p> <p>The most common reasons for staff not being trained are:</p> <ul style="list-style-type: none"> • There was no training process in place at the time. • There was insufficient time available to train people. <p>Where training wasn't in place it needs to be planned and implemented carefully and an audit trail completed to show it has been completed to meet the recommendation. In this case, ALL staff who are involved in those duties will need to be trained.</p> <p>Where training didn't take place because of time constraints, steps must be taken to address this issue or once again it will not be completed.</p> <p>Re-training is often a popular choice for managers seeking the easy way out, when the individual had the required knowledge and skills, but for whatever reason, the manager wants to avoid a disciplinary process.</p>
Re-train all staff	<p>A common recommendation for incidents such as discrimination and unwanted behaviour. This 'sheep dip' approach generally causes great resentment at everyone being 'punished' for the crimes of the few. Unless training has never taken place, this type of training approach should be avoided.</p>
Re write/update policy/safe systems of work	<p>Rewriting procedures tends to create a raft of half finished/currently being updated procedures. Only a worthwhile recommendation where it can be shown there was no procedure, or that it was not being followed by anyone and was a clear contribution to the cause of the incident.</p> <p>A complete procedure that deals with every eventuality cannot be produced. Many organisations have tried, and all have failed. What they end up with is an unworkable document that no one uses.</p> <p>Where procedures are adequate, and the majority are, the question remains that if a person did not follow the old procedure, why will they follow the new one?</p> <p>If new procedures are put in place then a communication/training plan will also be required.</p>
Coaching/mentoring of individuals	<p>Can be very effective in helping people develop long term skills and behaviours. Only works if the person recognises they have a problem and are willing to be coached or mentored.</p>
Replacing Equipment	<p>Accidents and incidents are sometimes used as a justification to replace machinery and equipment. There needs to be a direct cause link to prevent a recurrence and not incur significant cost.</p>
Significant change in policy to the detriment of all	<p>Commonly called the 'knee jerk' reaction, this rarely, if ever solves anything. It does cause resentment and bad feeling, and generally once the pressure is off, gets totally ignored.</p> <p>An example of this is the retraining of all staff (the sheep dip), training that is not planned or targeted, so will have little impact in preventing recurrence.</p>
Initiatives	<p>Launched with a fanfare, normally quietly forgotten about. Create the impression of something being done, and of managers taking firm action. In reality, take up time, energy and money with little or no return on the investment made.</p> <p>To be avoided.</p>

Disciplinary Action	<p>Usually the most effective tool at changing behaviour and preventing recurrence. When used well in conjunction with coaching and mentoring, disciplinary action can have a positive effect on individuals and the team, as well as showing that the organisation takes these incidents seriously.</p> <p>However, if disciplinary action is perceived as a 'witch hunt', then this will be counter effective in preventing recurrence and will hamper future investigations.</p> <p>On its own, disciplinary action will only hold the individual to account for their actions, but must be combined with an education process that ensures the individual can change their behaviour, and is fully supported in doing so.</p> <p>If disciplinary action is taken, it must be appropriate to the person and the situation.</p>
----------------------------	---

Exercise: Review a past investigation and the recommendations made.

- How many were implemented?
- What effect did the implementation have if any?
- How did those involved feel about the recommendations?

People?

The work place is full of people, people working the right way and the wrong way, and people behaving in the right way and the wrong way. In conducting investigations what we don't want is to create a blame culture where everyone treads in fear of any action or word.

People need to work freely and exercise sound judgement in making decisions. Investigations are about finding out why a particular event happened, and making recommendations to prevent it happening again, or reducing the impact if it cannot be prevented.

Where the issue is one of conduct, i.e. a person has behaved in a way that is below the standards expected, or one of capability in that their job performance falls below the standards expected, disciplinary action is usually the corrective action taken, either to improve performance or remove the person from the organisation.

Accidents and near-misses are more complicated, because they tend to involve more people, processes and equipment. Organisations need people to identify potential hazards before they become accidents, and there is a school of thought that applying discipline on people involved in an accident is counter productive to accident prevention, because it creates a negative atmosphere.

The problem is though that if all an investigation focuses on is procedure, and never behaviour, then there is no motivation to follow procedures bar the desire to get things right.

We know that road accidents have many causes. However, take the driver out of the car and leave it parked with the handbrake on, how many accidents will happen?

Vehicle accidents are caused by drivers not paying attention, not following the rules, driving too fast or too close, or in a way that is inappropriate for the conditions. What we do know that robust and fair enforcement improves driving standards, and thus improves safety.

In many areas of the UK, speed limits have been reduced, but it is not until those speed limits are enforced, through human or robotic policing (cameras) that speed actually falls.

So when an accident or near miss happens, the investigation has to look at the procedural factors, the technological factors and the human factors, and where people have not conducted themselves as they are expected to, then corrective action must be recommended.

5.4 How are people involved?

Equipment/technology:

- We need to know who bought it?
- What was the remit?
- Were the checks carried out?
- Has the kit been maintained correctly? Investigations often find that maintenance procedures were compromised “for operational reasons”, so someone made a bad decisions. Sometimes it is that the wrong equipment was bought, to save money, so again, someone made a decision.

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Skills and knowledge:

- Why did the person not have the skills and knowledge needed,
- Why were they allowed to work when not trained.
- Again, someone, somewhere made a decision about the training and the use of people who do not have the skills and knowledge to work safely.

When we train investigation skills in this way, trainers can be accused of trying to find someone to blame. Blame is not a productive outcome. The purpose is not to punish wrong-doing, but to find out what went wrong and put it right. Part of this is people being treated with respect and being held to account for their decisions, actions and behaviours.

Health and Safety has not improved because the equipment is better. It improved because directors were held accountable with the real threat of a custodial sentence, and so authorised the investment of time and money, and enforced the rules with vigour.

Recommendation, therefore are about actions to be taken that holds individuals to account for their actions. This most likely will be combined with retraining, coaching or other development activities, but only where the training objectives are very specific to the improvement of performance.

The most effective route to prevention of recurrence is to change attitudes and behaviours, and rewriting procedures never achieved that.

It is the report that will carry the evidence through the organisation and beyond. If done well the organisation will come out with credit, and may help save lots of money further down the line. If done badly, the incident will happen again, and no behaviour change will take place.

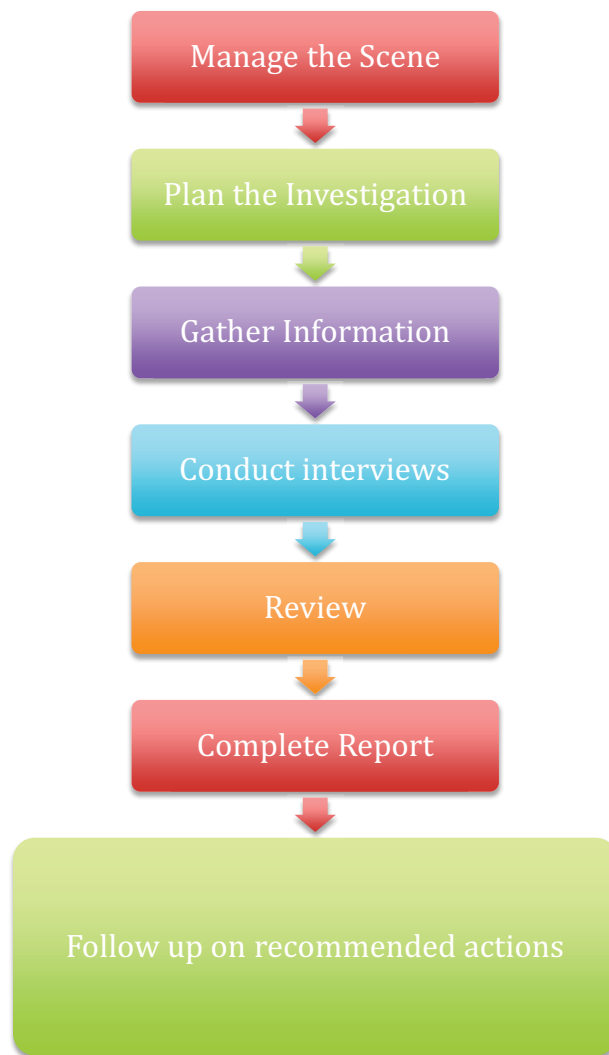
The report will also provide the evidence that will fulfil the Burchill Test;

1. Whether you (the organisation) actually believed that the employee was guilty of misconduct,
2. Whether you (the organisation) had reasonable grounds on which to base that belief, and
3. Whether you (the organisation) had carried out as much investigation as was reasonable in the circumstances of the particular case.

Key Points

- The report will be read by people who are not familiar with the organisation
- Reports should be easy to read
- Recommendations should drive actions to improve the situation
- Rewriting procedures rarely achieves the change needed
- The report will provide the evidence to satisfy the Burchill test.

8 Follow Up on Recommended Actions



Final Steps

How many investigations have been completed, with good recommendations, but nothing is done? Too many is the answer.

Responsibility for action should be clearly stated in the report, but ultimate responsibility lies with the management team. As the owner of the report though, the investigator needs to check what the outcomes have actually been, and update the report accordingly.

The investigator should follow up on three occasions: One month after the report has been submitted, three months later and six months later. The one month review checks what recommendations have been accepted and the progress for implementation. This gives the opportunity to find out about spin-off problems, or the rule of unintended consequences, and manage these situations before they become a bigger problem.

The three month review should see that the recommended actions have been completed and will make sure that all the documentation and audit trail have been completed.

Finally the six month review will report on the impact of the recommendations, long after the incident has been forgotten.

On each occasion the investigator should produce an addendum to the report showing what or what not has been achieved. While this does create work, it will help the organisation in the future to prove that incidents are investigated, recommendations made and implemented, and then evaluated to make sure they are having the impact intended.

Why Follow Up?

This is back to the objective of the investigation, to prevent recurrence. If the recommendations are not implemented then nothing will change. If they are implemented and nothing changes, then something different must be done.

It also means that “it will not go away”. Inevitably, when an investigation is completed there can be a rush to make changes. Often, people know that if they sit tight things will settle down and they can go back to doing what they have always done. Follow up will identify any ‘slippage’ and get the changes back on track again.

Finally, follow-up is also important should the organisation end up in court. It can be clearly identified what has been learned and what has been done to prevent recurrence, which will be considered by the courts when making judgements.

Appendices

List of Appendices

- A. **Considerations on the way to the scene**
- B. **What can you tell from the photograph**
- C. **Elimination Statement**
- D. **Maintenance Request Form**
- E. **Investigation Control Sheet**
- F. **Points to Prove**
- G. **Questions for Interviews**
- H. **Statements**
- I. **Report Structure**

Appendix A

On the way to the scene things to consider are:

What do you need?	<ul style="list-style-type: none"> • Camera <ul style="list-style-type: none"> - Charged - Correct date and time - Not a camera phone unless company issue - Ability to use in low light • Pen and paper • First aider • Elimination forms • Company accident pack
What will you do?	<ul style="list-style-type: none"> • Assess the scene • Get an initial impression of what happened • Take pictures • Draw a sketch • Establish who was in the area • Establish who saw or heard what • Establish who saw or heard nothing • Complete elimination statements • Get initial statements • Deal with the casualty

Appendix B

What can you tell from the photograph?



- Thick and heavy suggests it is cold
- No leaves on the trees supports this, so likely Autumn or Winter
- Type of clothing is for a motorcycle, so that is the likely mode of transport. Those who know motorcycle clothing will spot the suit as a BMW Rallye 3 suit, so suggests he is riding an adventure bike.
- Posing for a photograph, so likely to be a tourist.
- The vista suggests a national park, the eagle eyed will spot it as the Grand Canyon.
- Plastic bag suggests shopping.

If you met the person, a few questions would confirm everything.



Appendix D: Maintenance Request Form

Date of request	Time of request
Incident summary	
Equipment to be inspected	Serial Number
Report required by	
Details of Request	
Engineers Findings	

Name:

Position:

Date:



Appendix E: Investigation Control Sheet

Summary of investigation		
Lead Investigator		
Investigating Team	1	
	2	
	3	
	4	
	5	
	Task	Completed
Task List	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	

Document List

Questions to ask	Who to ask?

Company Logo

Interviews

Name	Investigator/Interviewer	Completed

Additional Info

Company Logo.

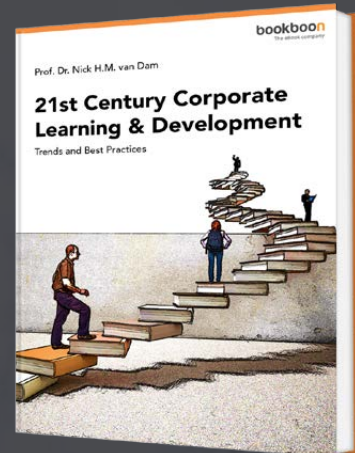
Findings

Recommendations	Responsibility	Target Completion Date	Date Completed

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Appendix F: Points to Prove

Accident	<ul style="list-style-type: none"> • There are correct procedures/methods/safe systems of work • These systems are widely used as the common practice • The person(s) involved were competent with full knowledge and ability • They knew the correct way to conduct themselves • The accident was the result of those involved not following correct procedures • They knew they were not following procedures
Bullying/ Harassment	<ul style="list-style-type: none"> • A policy exists that is up to date • The policy has been widely publicised and is well known • Training has taken place to support the policy • All employees have attended • The person accused received the training/has full knowledge of the policy • The behaviour was inappropriate • Somebody, directly or indirectly took offence ('insult is in the eye of the receiver') • The person knew what they were doing was inappropriate • The level of intention (although strictly not applicable, as it is sufficient for the 'victim' to feel harassed to prove harassment took place, often the bad behaviour is not intended and that harasser is not aware of the impact of their behaviour)
Discrimination	<ul style="list-style-type: none"> • The person discriminated against is subject to one or more of the protected characteristics • They were treated differently because of the protected characteristic (you need a comparator to show another person, not in the protected characteristic, has been treated better. • The treatment resulted in a detriment • That the discrimination was intended (Direct) or unintended (indirect)
Lack of Competence	<ul style="list-style-type: none"> • Standards exist and are used to develop employees • The person is fully trained • Their performance is below the standard of performance expected • How the person has been supported to achieve the set standards • The person has had every opportunity to improve • The disciplinary process has been followed correctly at all stages
For a dismissal to be fair	<ul style="list-style-type: none"> • The person did what they were accused of doing • A fair and objective investigation took place • Procedures were followed correctly • Procedures have been reviewed to ensure the person has had a fair opportunity to keep their employment • The appeal process was fully utilised
For the company	<p>Under <i>British Home Stores v Burchell</i>, three tests to help a court decide if a dismissal for misconduct is fair</p> <ol style="list-style-type: none"> 1. Whether the employer actually believed that the employee was guilty of misconduct, 2. Whether it had reasonable grounds on which to base that belief, and 3. Whether it had carried out as much investigation as was reasonable in the circumstances of the particular case. <p>This is sometimes shortened to a genuine belief, on reasonable grounds, after a reasonable investigation.</p>

Appendix G: Questions for Interview

Elimination Statements	I have no knowledge of the incident described above and cannot contribute to the investigation in any way.
Key Information <ul style="list-style-type: none"> • Procedures/Safe-System-of-Work Training	<p>Who and how qualified?</p> <p>Do procedures exist?</p> <p>Who wrote the procedures?</p> <p>Are the procedures adequate for the task?</p> <p>When were they completed?</p> <p>How are the procedures used?</p> <p>How often/have they been reviewed?</p> <p>If so, by who and when?</p> <p>What happens if the procedures are not followed?</p> <p>Do you work to the procedures?</p> <p>Does everyone fully comply with procedures?</p> <p>How does 'custom and practice' differ from the procedures?</p> <p>What is the accepted way of doing things?</p> <p>How do managers enforce compliance with procedures?</p> <p>Have you identified any problems with the procedures?</p> <p>Have you raised any problems with procedures?</p> <p>What happened when you did?</p> <p>Training can include:</p> <ul style="list-style-type: none"> • Formal training • Externally attended courses • Internally run courses • Skills and knowledge training • Awareness sessions (equality and diversity as an example) • Workshops • On-the-job training • Coaching • Mentoring • E Learning • Webcasts • Self directed learning • Qualification courses • Statutory

	<p>Who conducted the training and how are they qualified?</p> <p>Is it a statutory requirement?</p> <p>How to qualify?</p> <p>How to maintain qualification?</p> <p>Any professional development and CDP requirements?</p> <p>Has training been given?</p> <p>How was the training devised?</p> <p>How often is training reviewed and updated?</p> <p>When was the last update?</p> <p>How often should retraining be carried out?</p> <p>Who is responsible?</p> <p>When did training take place?</p> <p>Who delivered the training?</p> <p>Is there proof of attendance?</p> <p>Are there any forms of evaluation/competency test?</p> <p>What did you learn from your training?</p> <p>Do you think the training was adequate?</p> <p>Do you feel you were well trained?</p> <p>How confident were you after your training?</p> <p>How would you improve your training?</p>
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<p>Key Witnesses</p>	<p>Who? What is their relationship to the business? What time did they start work? What are their duties? What instructions did they receive from management? Where were they at the time? Who were they with? What were they doing? What did they see? Who did they see? What was heard? Who said what? What did they do? What happened? What happened next?</p> <p>For investigations into bully & harassment/inappropriate behaviour you can ask their opinion of the behaviour.</p> <p>Did you find the joke offensive? How did it make you feel? Has it happened before? One or more occasions? Who said what? Is it a single person or more than one person?</p>
<p>Those Involved</p>	<p>Who they are? Relationship to the business? What time did they start work? Where were they at the time? What were they doing? What training have they received? What is their usual way of doing things? What is their normal behaviour? What have their experiences been? What is their experience? Procedural knowledge? What did they do? What was different from standard procedure? Why did they do something different? What would they do differently in future?</p>



Appendix J: Report Structure

INVESTIGATION REPORT

Table of Contents

--

Executive Summary

Summarise the incident, what happened and who was involved.

--

Summary of Findings

--

- Recommendations**
- | |
|----|
| 1. |
| 2. |
| 3. |
| 4. |
| 5. |

Summary of Events

--

Summary of Procedures, Standards and Training

Who was Involved
Describe who was involved and what they did

What Happened
Describe what was done that was contrary to procedures, process, policy, safe systems of work or training

Witness List*		
Name	Summary of Evidence	Statement Ref No

*Include a reference to group elimination statement

Full Findings		

Detailed Recommendations		
Action	Responsibility	Completion Date
1		
2		
3		
4		
5		

Investigation Team	
Lead Investigator	
Investigation Team	
Notes	

List of Appendices